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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/684,075	10/08/2000	John Fors	0544MH-36340	2874
38441	7590	04/21/2005	EXAMINER	
LAW OFFICES OF JAMES E. WALTON, PLLC 1169 N. BURLESON BLVD. SUITE 107-328 BURLESON, TX 76028			ROBINSON BOYCE, AKIBA K	
		ART UNIT	PAPER NUMBER	
		3639		

DATE MAILED: 04/21/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Advisory Action Before the Filing of an Appeal Brief</b>	Application No.	Applicant(s)
	09/684,075	FORS, JOHN
	Examiner Akiba K Robinson-Boyce	Art Unit 3639

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 29 March 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1.  The reply was filed after a final rejection, but prior to filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

a)  The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.  
 b)  The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.  
 Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2.  The reply was filed after the date of filing a Notice of Appeal, but prior to the date of filing an appeal brief. The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3.  The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
 (a)  They raise new issues that would require further consideration and/or search (see NOTE below);  
 (b)  They raise the issue of new matter (see NOTE below);  
 (c)  They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
 (d)  They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4.  The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
 5.  Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
 6.  Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7.  For purposes of appeal, the proposed amendment(s): a)  will not be entered, or b)  will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: \_\_\_\_\_.

Claim(s) objected to: \_\_\_\_\_.

Claim(s) rejected: 2,3,5-22 and 24-40.

Claim(s) withdrawn from consideration: 1,4 and 23.

**AFFIDAVIT OR OTHER EVIDENCE**

8.  The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
 9.  The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

10.  The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11.  The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Continuation Sheet.  
 12.  Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). 022105  
 13.  Other: \_\_\_\_\_.

*Thom A. Dixon*  
 THOMAS A. DIXON  
 PRIMARY EXAMINER

Continuation of 11. does NOT place the application in condition for allowance because: first, the applicant argues that Sellers fails to teach "the set of financial projections for a candidate product providing a future profit determination for each of a set of possible product introduction dates for the candidate product". The applicant also argues that one of ordinary skill in the art would appreciate that Sellers' financial projections are based on one product introduction date since, according to applicant, Sellers teaches that examples of the financial parameters are the net present value (rather than net present values), etc. However, Col. 113, lines 32-49 of Sellers discloses a profitability index, which represents the future profit determination of the present invention. The fact that this profitability index includes a financial simulation that includes the economic life of the product reflects financial projections for a candidate product providing a future profit determination for each of a set of possible product introduction dates for the candidate product as disclosed in the present invention. In addition, Sellers discloses that an employee's previous exposure information including the start and end dates of the exposure are displayed in col. 43, lines 3-5, thereby indicating more than one introduction date. In addition the applicant argues that Sellers fails to teach "a planning engine operable to ... select a set of candidate products that meets all resource availability constraints and maximizes profits", but according to applicant, merely teaches a system wherein candidate products are selected using human intervention rather than via any planning engine. However, in col. 87, lines 18-23 of Sellers, reviewing production scheduling test specification is disclosed, along with Col. 89, lines 5-10, browsing results of such a profitability is disclosed, and in col. 107, lines 5-9, projecting definition conversation used to define product development effort is also disclosed in Sellers. All of these are performed using human intervention, however through use of computerized systems. It is the human that manually inputs information, but it is the computer that processes the information, thereby acting as an engine. In addition, the applicant argues that Sellers fails to recite "a development schedule for the set of candidate products as a weighted factor in generating the development schedule such that products more affected by time are scheduled for faster production than products less affected by time". However, the combination of Sellers and Lesaint disclose this limitation. Lesaint does disclose "financial penalties" for not completing the task on time, or arriving to start the task on time, however, Lesaint specifically discloses in col. 12, line 52-Col. 13, line 9, that priority is given to the tasks that can be done immediately, with the greatest importance score. Lesaint et al discloses this limitation in an analogous art for the purpose of showing that the product schedules can be developed according to certain time constraints. Finally, the applicant argues that the combination of Sellers and Lesaint is improper. However, this combination is proper since both references disclose systems that schedule the production of materials or resources as shown in Sellers in col. 8, lines 49-51 and in Lesaint, the abstract, lines 1-4. .